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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/782,290

02/19/2004

Udo Hoss

WP 18960US1

4296

32842

7590

07/10/2006

THE LAW OFFICE OF JILL L. WOODBURN, L.L.C.

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EXAMINER

GITOMER, RALPH J

ART UNIT

PAPER NUMBER

1655

DATE MAILED: 07/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/782,290	Applicant(s) HOSS ET AL.	
	Examiner Ralph Gitomer	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The response received 6/10/04, the ribboned priority papers received 2/19/04 and the IDS received 2/19/04 have been entered and claims 1-26 are currently pending in this application. Please update the continuing information in the specification and inform the examiner of any related cases, abandoned, pending or allowed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfeiffer.

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Pfeiffer (6,091,976) entitled "Determination of Glucose Concentration in Tissue" teaches in column 1 last paragraph bridging to column 2, the perfusion solution is mixed with glucose before being added to pass through the microdialysis probe and a predetermined initial concentration is set. Signals are observed by the test cell. Subsequent perfusion solution passing at a higher flow during the transport intervals through the probe retain the initial glucose concentration. In column 2, the volumetric flow is varied to change the glucose concentration. A baseline value is determined. In column 4 lines 17-49, flow changes are discussed. In Fig. 2 #36 are two reservoirs.

The present claims differ from Pfeiffer in that the claims specify the control device adjust the "content" of glucose where Pfeiffer adjusts the flow rate.

It would have been obvious to one of ordinary skill in this art at the time the invention was made to adjust the "content" of glucose by adjusting the flow rate as taught by Pfeiffer because changing the flow rate effectively also changes the "content" of glucose in the flowing solution. Both would reduce the glucose gradient adjacent to the microdialysis probe and decrease the time of equilibration.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the following applies in all occurrences.

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There are many instances of lack of antecedent basis in the claims, for example in claim 1, "the glucose", "the diffusion" in claim 2 "the momentary". Claim 1 is directed to "an arrangement" which is not understood and appears to be a device. In claim 1 line 7, "after the microdialysis probe" is unclear. In claim 1 line 7 and all occurrences, "the cell being formed" does not positively recite what the cell does. Claims 12 and 16 are duplicates. Further, "digitally operated" is queried where analog or digital does not refer to how something is operated. In claim 17 line 5, "contents" is not understood.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hoss (6,852,500) is the parent patent.

Kalatz (6,925,393) teaches determining glucose concentration.

Pfeiffer (6,434,409) teaches determining glucose concentration.

Schoonen (5,615,671) teaches determining glucose concentration.

Roeper (6,591,126) teaches a microdialysis system.

Pfeiffer (WO 97/42868) teaches determining glucose concentration.

Kerner (DE 44 26 694 A1) teaches determining glucose concentration.

Pfeiffer (DE 41 30 742 A1) teaches determining glucose concentration.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ralph Gitomer whose telephone number is (571) 272-0916. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Ralph Gitomer
Primary Examiner
Art Unit 1655

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